

News Release

New Mexico Congressional Delegation

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N.M. LAWMAKERS OFFER GOVERNMENT COMPENSATION TO CERRO GRANDE FIRE VICTIMS

WASHINGTON -- The New Mexico congressional delegation today unveiled the **Cerro Grande Fire Assistance Act** (S.2736), a bill to establish a "fair, comprehensive and efficient" process for compensating victims of the disastrous blaze that ripped through the Los Alamos area last month.

U.S. Senators Pete Domenici and Jeff Bingaman, who crafted the bill in close collaboration with the White House Office of Management and Budget (OMB), introduced the bill in the Senate Thursday, and indicated that they will push to have the compensation package passed as part of an emergency funding measure now moving through Congress.

The bill is supported by the entire New Mexico congressional delegation, which includes Representatives Joe Skeen, Heather Wilson, and Tom Udall.

To begin the process of providing federal compensation for losses associated with the Cerro Grande Fire started May 4 by the National Parks Service, the bill would establish a compensation process through a separate Office of Cerro Grande Fire Claims within the Federal Emergency Management Agency (FEMA).

The bill authorizes this new FEMA office to provide compensation for property losses and personal injuries sustained by the victims, including all individuals (regardless of immigration status), Indian tribes, small businesses, local governments, schools, and any other entities injured as a result of the fire.

"Everyone involved wishes that the fire could be unset, the match unlit, the decision unmade. But there is no way to undo this awful catastrophe," **Domenici** said. "The federal government can't undo the damage, but it can provide prompt compensation. Providing compensation is the objective of this legislation. We have worked closely with the White House, and I believe it is a good way to start the process of rebuilding lives."

"Lives will be changed forever by this catastrophe, and nothing Congress can do will change that," **Bingaman** said. "We can never replace the value of lost heirlooms or memories, nor the comfort people felt in homes that are now gone. But, when Congress passes this bill and the President signs it into law, the government will have taken full responsibility for the catastrophe and we hope that the thousands of New Mexicans affected will be able to move quickly onto the next chapter of their lives."

"This legislation gives victims of the Cerro Grande fire the confidence and assurance that the federal government will pick up the tab for the replacement of homes and other property lost in the fire," **Skeen** said. "Just as important, the legislation provides for a specific process and time line so that Los Alamos residents can move forward in a timely manner with replacing their lost property and return to as much of an ordinary way of life as possible."

"We need to make people whole, and do that in a way that doesn't require a dream-team of lawyers," **Wilson** said. "I think this package, once enacted, will accomplish that. Senator Domenici and Bingaman have worked hard to ensure that we do more than simply pay lip service to the people of Los Alamos. We have to do this right and move this legislation quickly through the Congress and to the President. I will do everything I can to make this happen in the House and I look forward to our continued cooperation."

"The excellent efforts of the delegation have produced a bill that will ensure the speediest means of relief for my constituents," **Udall** said.

The Cerro Grande Fire, intended to be a controlled burn to clear overgrowth in the Bandelier National Monument, ultimately prompted the evacuation of 25,000 New Mexicans and closed Los Alamos National Laboratory before it raged through the community, destroying hundreds of homes. The blaze eventually consumed an estimated 48,000 acres and has cost the federal government more than \$10 million to contain.

The Cerro Grande legislation does not specify a specific level of funding to compensate losses outlined in the bill, but dictates as much funding as is necessary will be made available by Congress.

The bill stipulates that compensation will include the replacement cost of homes, cars and any other property lost or damaged in the fire, as well as lost wages, business losses, insurance deductibles, emergency staffing expenses, debris removal and other clean-up costs and any other losses deemed appropriate by the FEMA Director.

To expedite the process, the bill requires FEMA to issue rules to govern the claims process within 45 days of enactment. It also requires FEMA to publish the filing guidelines in easy-to-understand English and Spanish newspaper advertisements in New Mexico. After the rules are in place, victims will have up to two years to file claims, and FEMA must pay those claims within 180 days of filing.

The bill also gives FEMA the authority to make interim payments, and gives priority status to individual claimants over insurance companies. However, the legislation provides a process for reimbursing insurance companies for the costs they pay to help rebuild Los Alamos and the surrounding communities.

Finally, the bill preserves the right of victims to sue under the federal Tort Claims Act or to appeal the final claims decision of FEMA.

The following is a more comprehensive summary of provisions within the Cerro Grande Fire Assistance Act:

SUMMARY OF CERRO GRANDE FIRE COMPENSATION LEGISLATION

ADMINISTRATOR: FEMA as lead agency, with authority to designate an independent claims manager.

ENTITIES ELIGIBLE FOR COMPENSATION: all individuals, Indian tribes, corporations, tribal corporations, partnerships, companies, associations, counties, townships, cities, state, school districts and any other non-federal entity **that suffered injury resulting from the Cerro Grande fire.**

TYPES OF COMPENSABLE INJURIES: tracks the Federal Tort Claims Act: Injury, loss of property and personal injuries are compensable.

DAMAGES FOR “LOSS OF PROPERTY” WILL INCLUDE: uninsured or under-insured property loss, decrease in the value of real property, damage to physical infrastructure, loss of subsistence hunting, fishing, firewood, timbering, grazing and agricultural activities, and any other loss deemed appropriate as a “loss of property.”

DAMAGES FOR “INJURY” WILL INCLUDE “BUSINESS LOSSES”: Such as, damage to tangible assets or inventory, business interruption losses, overhead costs, employee wages paid for work not performed as a result of the fire, and any other injury deemed appropriate for compensation as a “business loss.”

DAMAGES FOR “INJURY” WILL INCLUDE “FINANCIAL LOSSES”: Such as, increased mortgage interest costs, insurance deductibles, the cost of flood insurance,

temporary living or relocation expenses, emergency staffing expenses, debris removal and other clean-up costs, hazard mitigation and any other injury deemed appropriate for compensation as a “financial loss.”

PROCESS: FEMA Director required to promulgate interim final regulations within 45 days of enactment of the Act. Claims must be filed within two years of promulgation of the regulations, and adjudicated by FEMA within 180 days of filing. Once regulations are promulgated, Director must publish easy-to-understand explanation of the rights conferred by the law and a description of the claims process in English and Spanish in New Mexico newspapers and other media outlets.

ELECTION OF REMEDIES: Party must at the outset elect either to proceed under Federal Tort Claims Act (FTCA) or legislative claims process. The election is binding on the claimant for all damages resulting from the Cerro Grande fire. Must release U.S. Government from lawsuit under FTCA as a condition of receiving a claims process award.

APPEAL: If victim is dissatisfied with claims decision, may appeal to Federal District Court for the District of New Mexico. Standard of review is that the decision of the Director stands if supported by substantial evidence on the record.

INSURANCE: Insurance companies allowed to proceed in same manner under the Act as all other claimants, but to the maximum extent practicable, insurance company subrogation claims must be paid after those of other injured persons. Awards received through claims process will be reduced by amounts of insurance payments already received.

CONSULTATION: Director required to consult with Secretary of Energy, Secretary of Interior, Secretary of Agriculture, SBA, FEMA, other federal agencies, state, local and tribal officials to ensure the efficient administration of the process and provide an outlet for local concerns.

ATTORNEY'S FEES: Limited to 10 percent of claims award. Attorneys who violate the rule fined \$10,000.

MATCHING REQUIREMENTS: Waives State and local matching requirement for all Federal programs utilized in response to the fire.

FLOOD INSURANCE: Government will reimburse homeowners for the cost of three years of Federal flood insurance premiums if their property was not in the flood plain prior to the fire and subsequently was included in the flood plain as a result of the fire.